

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

Cincinnati, Ohio

FOREST PHARMACEUTICAL, INC.

Employer

and

NATIONAL INDUSTRIAL WORKERS UNION 2105, NATIONAL
FEDERATION OF INDEPENDENT UNIONS, A DIVISION OF
LIUNA, AFL-CIO 1/

Petitioner

Case 9-RC-17379

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All manufacturing employees, packaging employees, janitorial employees, plant service employees/mechanics, and warehouse employees, including all group leaders, employed by the Employer at its 5000 Brotherton Road, Cincinnati, Ohio facility, excluding all office clerical employees, laboratory (quality assurance and quality control) employees, temporary agency employees and all professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations requires that the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. on the day of the election. The term

"working day" shall mean an entire 24 hour period excluding , Saturdays, Sundays and holidays. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **National Industrial Workers Union 2105, National Federation of Independent Unions, A Division of LIUNA, AFL-CIO.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **April 26, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 3, 2000**.



Dated April 19, 2000

at Cincinnati, Ohio

Richard L. Ahearn, Regional Director, Region 9

1/ The Petitioner, including its affiliation, appears as named in the petition.

2/ The Employer, a corporation, is engaged in manufacturing, packaging and distributing pharmaceutical products at its Cincinnati, Ohio facility, where it employs approximately 56 or 57 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The parties agree, and I find, that a unit comprising all manufacturing employees, packaging employees, janitorial employees, plant service employees/mechanics and warehouse employees employed by the Employer at its 5000 Brotherton Road, Cincinnati, Ohio facility, excluding all office clerical employees, laboratory employees (quality assurance and quality control) employees, temporary agency employees and all professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining. The parties disagree, however, on the unit placement of eight group leaders whom the Employer, contrary to the Petitioner, would exclude from the unit as supervisors within the meaning of Section 2(11) of the Act. The unit placement of the eight group leaders is the only issue involved in this proceeding.

The Employer's operations are apparently located in a single-story building. The building consists of an administrative area where the laboratory (quality assurance and quality control) employees, office clerical employees and managerial staff are located. The building also has several "rooms" in which the packaging lines are located and the packaging employees work, and nine "suites" which house the manufacturing operation and where the manufacturing employees are located. In addition, the building contains a warehouse, storage area, plant service area, shipping area, cafeteria, changing rooms and other offices and work locations.

The Employer's manufacturing operation consists of blending and compressing pharmaceutical powders and tablets. In performing this work, employees use various machines located in the manufacturing suites. The products are then packaged, labeled and shipped to customers. Employees package, label and prepare the products for shipment on the lines located in the packaging rooms of the facility. The plant service employees/mechanics are responsible for performing the repairs and maintenance necessary to keep the machinery and equipment functioning. A janitorial staff is responsible for keeping the machines and lines clean at all times during the shift to assure that the Employer is in compliance with federal regulations. The Employer also has a warehouse in which raw materials and products are stored and in which one unit employee currently works. In addition to these departments, in which the unit employees and disputed group leaders work, the Employer has a laboratory (quality assurance and quality control) and a human resources department.

The Employer's vice-president of manufacturing, Terrill John Howell, is responsible for the operation of the Cincinnati, Ohio facility. All department heads or supervisors report to Howell. The majority of the unit employees work in packaging. At the present time, there are approximately 33 or 34 employees, 3 of whom were hired on or near the date of the hearing, including 6 disputed group leaders assigned to packaging. The director of the packaging department is Gary Yurchak, who reports directly to Howell. Yurchak is assisted by packaging supervisors, Dave Done and Darlene Comberger, whom the parties stipulated are statutory supervisors. In addition, there are five janitorial employees, including a janitorial group leader, who are assigned to the packaging department and who report directly to packaging supervisor,

Dave Done. There are approximately 11 manufacturing employees, including 1 disputed group leader. The manufacturing operation is under the direct supervision of the manufacturing manager, James Hamilton, who is assisted by a manufacturing supervisor, Robert Tracy. There are seven plant service employees/mechanics who are responsible to the plant service supervisor, James Boyd, and plant service coordinator, Steve Ludwig. Finally, the one warehouse employee reports to warehouse manager, Herb Wilson, who, in turn, reports directly to the purchasing/accounting director, Dave Boyle. There are no group leaders employed in plant service or the warehouse. In addition to the unit employees, and disputed group leaders, the Employer employs numerous laboratory (quality assurance and quality control) employees, office clerical employees, administrators and managers.

Although the Employer at one time operated two shifts, it currently works only one extended or staggered shift with employees scheduled to work either from 5:30 a.m. to 2:00 p.m. or from 8:00 a.m. to 4:30 p.m. The Employer also occasionally schedules Saturday work, particularly for a packaging crew. All rank-and-file employees, including the group leaders, punch a time clock and are hourly paid. Employees earn between \$10 and \$12.50 per hour, except the group leaders receive approximately 20 percent more than the next highest paid employee working in the same department. All employees are entitled to the same benefits and share the same facilities, including the cafeteria and parking lot.

GROUP LEADERS:

The Employer currently employs eight group leaders. There are six group leaders, Marcia Muddiman, Wilda Carpenter, Judy Jones, Diane Nelson, Toni Carlton and Frances Turney, who work in packaging; one group leader, Ronald Boice, is assigned to manufacturing; and one group leader, Willie McCarter, works on the janitorial crew. Although the record discloses some divergencies in the duties performed by the various group leaders, the parties stipulated, for purposes of determining their supervisory status, that the group leaders possessed and exercised the same authority in carrying out their responsibilities.

Section 2(11) of the Act defines a supervisor as an individual:

. . . having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” See, *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083,

1084 (1985); *Chicago Metallic Corp.* supra; *Advance Mining Group*, 260 NLRB 486-507 (1982). It is also well established that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). “Accordingly, whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority [the Board] will find that supervisory status has not been established at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Employer takes the position that the group leaders are supervisors within the meaning of Section 2(11) of the Act and must be excluded from the unit. Under well settled principles, the Employer, therefore, has the burden of establishing the supervisory status of the group leaders. *Ohio Masonic Home*, supra; *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, supra. On the basis of a careful review of the record and well established precedent, I have concluded that the Employer has not met its burden of establishing that the group leaders are supervisors within the meaning of Section 2(11) of the Act. Rather, as described in detail below, the group leaders here possess the authority and have the duties and responsibilities of “leadpersons” whom the Board generally includes in bargaining units.

The six group leaders in packaging are primarily responsible for a package line or related labeling functions. However, the record discloses that other level II or even level I operators in the packaging department may be responsible for such a line from time to time or for extended periods when a group leader is absent. The packaging group leaders are assigned to a specific line apparently by a daily posting on a board near the time clock. It appears that, at least, one group leader in the packaging department is generally assigned on a daily basis to label control. The specific assignments for the group leaders responsible for packaging lines are contained on a “batch record.” The group leaders are responsible for checking components, raw materials and machines used in the production or packaging of products. The group leaders must verify the raw materials and components with quality assurance before manufacturing and packaging the products. The group leaders inform employees which machines are to be operated, but there is no evidence any independent judgment is required in performing this aspect of their work. The group leaders are also responsible for training new employees assigned to their work areas.

During production, at least in packaging, group leaders make hourly inspections and if problems are discovered they contact their supervisor or quality assurance to get it corrected. Group leaders are responsible for keeping a line in operation and may summons plant service employees/mechanics if a problem develops with a line or a machine. The group leaders do bottle counts, leak tests, torque tests on the bottle caps and record products that are ready for shipment. In addition, at least, one group leader in the packaging department is responsible for label controls and for making sure all labels on the products are correct. The group leaders have keys to the label room and “label cage” and some have keys to the Employer’s extensive alarm system. Finally, one packaging group leader, apparently Diane Nelson at the present time, works if the Employer operates on Saturdays. When the Employer has Saturday work, a supervisor generally opens the facility and remains on the premises for approximately 2 hours. After that time, the group leader is apparently responsible for overseeing the work. However, Nelson states that she has no additional authority on those occasions and if a problem occurs, she contacts a supervisor. According to Nelson, she has encountered only one problem on a

Saturday and that occurred when an employee reported to work intoxicated. On that occasion, Nelson telephoned a supervisor and obtained instructions on what procedures to follow.

It appears that the group leader in manufacturing and the janitorial group leader perform the same general functions, including training new employees, in their area of responsibility, as the packaging group leaders. The manufacturing group leader, Ronald Boice, is also responsible for sampling the “blends,” recording relevant information relating to the samples and forwarding the recorded information to quality assurance. The record discloses that the janitorial group leader, Willie McCarter, is often present if the Employer is open on Saturday and is responsible for locking the building at the end of the day. However, there is no evidence that any of the other janitorial employees work on Saturdays.

The group leaders do not have the authority to hire, fire, suspend or lay off employees, nor do they have the authority to effectively recommend such action. In testifying concerning these supervisory indicia, vice-president of manufacturing, John Howell stated: “They (group leaders) have the authority to recommend . . . and based on their recommendations an independent investigation takes place.” (Emphasis added.) Where recommendations are subject to an independent investigation by higher management before being acted upon, such recommendations are not sufficient to confer supervisory status. *Children’s Farm Home*, 324 NLRB 61 (1997) (the Board has consistently held that authority to effectively recommend generally means that the recommended action is taken, unlike here, without independent investigation). See also, *Hawaiian Telephone Co.*, 186 NLRB 1 (1970); *Brown & Root, Inc.*, 314 NLRB 19 (1994). Moreover, there is no evidence that the group leaders have the authority to independently promote employees or to adjust their grievances.

Although the record discloses that group leaders may inform employees what machines to use in keeping a line operational, there is no evidence that any independent judgment is required in making such assignments. *Sommerset Welding & Steel, Inc.*, 291 NLRB 913 (1988) (the distribution of work assignments and making sure they are completed, as here, without evidence of the exercise of independent judgment do not confer supervisory status). See also, *Sears, Roebuck & Co.*, 292 NLRB 753 (1989); *Ohio Masonic Home*, supra. Moreover, the fact that the group leaders train new employees does not make them supervisors within the meaning of Section 2(11) of the Act. *Sorenson Lighted Controls, Inc.*, 286 NLRB 969 (1987); *Children’s Farm Home*, supra.

It appears from the record that personnel matters are for the most part handled by department managers or supervisors. There is some record testimony that if an employee has to leave early on a Saturday, when no admitted supervisors are present, they could go to the group leader. However, there is no evidence that the group leader has any discretion or could prevent the employee from leaving under threat of discipline. To the contrary, the group leader who works Saturdays, Diane Nelson, testified she was given no more authority for Saturdays than for other work days. Thus, the type of authority exercised by group leaders in dealing with employees who fail to report for work or leave work early does not confer supervisory status. *Children’s Farm Home*, supra.

The group leaders in prior years have completed evaluation forms on employees assigned to work in their departments. These forms were not completed in 1999 apparently because of a new director, but may again be used in the future. In any event, the completion of these

evaluation forms, assuming they are completed in future years, is not sufficient to confer supervisory status on the group leaders. The record discloses that after the group leader has completed the evaluation forms, they discuss them with the director or manager of the department and if the group leader's ratings for an employee differ from that of the manager, the ratings are brought into harmony. Such evaluations by the group leaders, which are subject to review and approval by higher management, do not establish that the group leaders are supervisors. *Nymed, Inc. d/b/a Ten Brock Commons*, 320 NLRB 806 (1996); *Children's Farm Home*, supra. (Evaluations prepared by [group leaders] which are reviewed and approved by higher management militates against a supervisory finding with respect to the group leaders). See also, *Brown & Root, Inc.*, supra.

With respect to discipline, the vice-president of manufacturing, John Howell, states that a group leader could move an employee from one job to another for disciplinary reasons. However, it does not appear that group leaders do so or have been advised that they have such authority. Howell states that he never personally advised the group leaders that they have such authority but claims he told supervisors to inform the group leaders of such responsibilities. It does not appear from the record that supervisors related such instructions to the group leaders. To the contrary, group leader, Diane Nelson, testified she was never given such authority. The record also discloses that in 1997 and 1998, janitorial group leader, Willie McCarter, issued four separate memoranda of discipline to two different employees. However, it is not clear whether McCarter exercised any discretion in issuing these warnings. Although the hearing officer requested that the Employer make McCarter available to testify concerning his role in administering discipline, McCarter did not appear at the hearing. Accordingly, it is not possible to determine the circumstances and the specific role played by McCarter in issuing these "warnings." Further, when questioned concerning the group leaders' exercise of discretion in issuing warnings, Howell stated: "Our supervisors don't even have independent judgment over discipline, that's why we have an HR department." In addition, Howell testified that, except for McCarter, he is not aware of any other group leaders having issued a warning, even on Saturdays. Indeed, group leader, Diane Nelson, testified that if she has a problem, even on a Saturday, she would contact a supervisor. Although Howell indicated a group leader could send an employee home on Saturday, he testified if a problem were severe, the group leader would, "gather all the facts and call HR or call [a] supervisor, director [or] whoever."

Under all the circumstances, it is clear that the few disciplinary warnings issued by McCarter, which were either witnessed by or submitted to higher management, do not satisfy the burden of proof necessary to establish that the group leaders are supervisors within the meaning of Section 2(11) of the Act. The warnings issued here are the type consistently found by the Board not to confer supervisory status. *Children's Farm Home*, supra; *Biewer Wisconsin Sawmill*, 312 NLRB 506 (1993) (the presence or the apparent acquiescence of higher management officials at the issuance of discipline by a [lead person] militates against finding the latter to be a statutory supervisor). See also, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, supra. I also find noteworthy that apparently only one of the group leaders ever issued a warning and none have issued since 1998. Moreover, the record discloses that the warnings issued by this group leader were either witnessed by or submitted to higher management officials and there is no evidence that any of the warnings impacted an employee's job status. *Children's Farm Home*, supra; *Biewer Wisconsin Sawmill*, supra; *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, supra. Finally, I note that the Board recently, in *Capri Sun, Inc.*, 330 NLRB No. 158 (March 31, 2000), found that "maintenance leads," who possessed similar indicia

to the group leaders here, including the authority to issue warnings with the approval of higher management, not to be supervisors within the meaning of Section 2(11) of the Act.

Although the group leaders punch a time clock and are hourly paid, the record discloses that they receive approximately 20 percent more than the next highest paid employee in their department. According to Nelson, she received a \$1.50 per hour raise when she was appointed group leader. All employees, including group leaders, apparently receive the same benefits and share the same employee facilities. Under such circumstances, the fact that the group leaders receive a higher hourly paid rate does not confer supervisory status. *Brown & Root, Inc.*, supra. Moreover, the fact that the group leaders have keys to the building, label room and cages and to the alarm system does not make them supervisors. Finally, I note that if the group leaders are found to be supervisors, the Employer would have, on a one-shift operation, 9 supervisors (3 admitted supervisors and 6 group leaders) for 27 or 28 packaging employees, 3 supervisors (2 admitted supervisors and 1 group leader) for 10 manufacturing employees, and 2 supervisors (1 admitted supervisor and 1 group leader) for 4 janitorial employees, a totally unrealistic ratio which militates against a supervisory finding. See, e.g., *Spector Brake Systems*, 216 NLRB 551 (1975).

The cases cited by the Employer in its brief do not support a finding that the group leaders are supervisors. I agree with the Employer's contention that case authority defines the supervisory indicia set forth in Section 2(11) in the disjunctive and that if an individual meets any of the criteria under Section 2(11) of the Act, such individual is a statutory supervisor. *Ohio Power Company v. NLRB*, 176 F.2d 385 (6th Cir. 1949); *Queen Mary*, 317 NLRB 1303 (1995) en^d. 113 F.3d 1242 (9th Cir. 1997). However, as detailed supra, I do not find that the group leaders here exercise or possess any of the supervisory indicia in Section 2(11) in a manner requiring the use of independent judgment.

Swan Super Cleaners, Inc., 152 NLRB 163 (1965), cited by the Employer in its brief, is distinguishable from the instant case. In *Swan*, the two individuals found to be supervisors were often the only individuals with authority in a 65-employee department. Moreover, they were responsible for making sure diverse work was performed correctly, were introduced as and looked upon by other employees as their supervisors, had the authority to order other employees to correct or redo work, performed little actual production work and were salaried. The group leaders here are hourly paid and there is no evidence that they have the authority to order employees to correct work or that other employees consider them to be supervisors.

Likewise, *Vasaturo Brothers, Inc. d/b/a Vesurrio Foods Co.*, 321 NLRB 328 (1996), relied on by the Employer, does not support its position that the group leaders are supervisors. In *Vasaturo*, the administrative law judge found that an individual who could discipline employees on his own and who, in the manager's absence, operated the entire warehouse exercising the same authority as the manager, was a supervisor. The administrative law judge also found an individual to be a supervisor who was night manager with complete authority to direct the workforce. The group leaders here do not have any of the independent authority exercised by the individuals found to be supervisors in *Vasaturo*. To the contrary, the duties of the group leaders here are more akin to those of the sales manager in *Vasaturo* who was found not to be a supervisor.

Similarly, *Entergy Systems & Service, Inc.*, 328 NLRB No. 125 (1999) and *Venture Industries, Inc.*, 327 NLRB No. 165 (1999), cited by the Employer, do not advance its position that the group leaders are supervisors. In *Entergy Systems & Service, Inc.*, relying on the fact that crew leaders were the only individuals in a position to evaluate and direct employees, could order work to be redone and were responsible for overseeing the job, the Regional Director found that crew leaders were statutory supervisors. The Board, on review, agreed that the crew leaders were supervisors but only on the limited ground that they could, based on their independent judgment, promote or effectively block the promotion of an employee. There is no probative evidence that the group leaders here can affect, using independent judgment, the promotion or any other terms or conditions of employment of other employees. In *Venture Industries*, the Board found that department and line supervisors, who could recommend that employees be suspended or promoted to fill in-plant jobs, and whose recommendations on suspensions were followed 75 percent of the time and whose recommendation for filling in-plant jobs were followed 80 to 90 percent of the time, were supervisors. The group leaders here do not make recommendations regarding the suspension of employees or to fill in-plant jobs.

The Employer is correct in its assertion that the evaluation forms previously completed by group leaders were considered in determining pay raises and promotions. However, the evaluation forms completed by the group leaders are not the type of evaluations relied on by the Board in conferring supervisory status on an individual. In addition to the group leaders, the department director and supervisor also completed evaluation forms on the employees. All forms were then reviewed and discussed with the director and if an employee received different ratings from the appraisers, the ratings were often changed to bring them into harmony before they became final. The Board has consistently held that where evaluations of employees prepared by (group leaders) are not final and controlling with respect to raises and promotions but are “merely advisory and preliminary,” the preparation of such evaluations by a (group leader) does not confer supervisory status. *Children’s Farm Home*, supra and cases cited therein. The Employer has not cited any case in which the Board found supervisory status based on the completion of evaluations similar to those prepared by the group leaders in this case.

Contrary to the Employer’s assertion in its brief, a careful review of the record does not disclose any evidence, unlike in *Vasaturo Brothers, Inc.*, supra and *American Crane Corp.*, 326 NLRB No. 153 (1998), cited by the Employer, that other employees perceive the group leaders as their supervisors. Indeed, there was no testimony offered at the hearing from any employee who worked with the group leaders in issue. In any event, the mere fact that an individual may be perceived as a supervisor does not confer supervisory status as defined in Section 2(11) of the Act. Moreover, the fact that the group leaders have keys to the facility and label rooms and received 20 percent more per hour than other employees does not confer supervisory status. Although the Board referred to their higher rate of pay in finding certain individuals to be supervisors in *McClatchy Newspapers, Inc.*, 307 NLRB 773 (1992); *The Grand Rx Drug Stores of the Florida Division of the Grand Union Company*, 193 NLRB 525 (1971) and *Little Rock Hardboard Company*, 140 NLRB 264 (1962), cited by the Employer, the Board did not rely on this factor alone but referenced it only in connection with other primary indicia of supervisory authority possessed and exercised by the individuals in question. Indeed, the fact that an individual receives a higher rate of pay than other employees or has other secondary indicia of supervisory authority, such as the possession of keys to an employer’s facility, does not make the individual a statutory supervisor. *Brown & Root, Inc.*, supra.

The Employer's assertion in its brief that the Board has found individuals to be supervisors based on their assignment and direction of work is also correct. However, the cases relied on by the Employer, *Great American Products*, 312 NLRB 962 (1993); *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972); and *Birmingham Fabricating Company*, 140 NLRB 640 (1963), do not support its position that the group leaders here assign and direct work utilizing independent judgment sufficient to cloak them with supervisory authority. In *Great American Products*, the Board agreed with the administrative law judge that the "assembly leadman," who exercised independent judgment in assigning work, granted employees' time off and transferred employees between various departments, was a statutory supervisor. The group leaders here do not possess or exercise such authority. To the contrary, the disputed group leaders, in overseeing work in their respective departments, exercise similar authority to the "casting leadman" found by the Board in *Great American Products* not to be a statutory supervisor. In both *Custom Bronze & Aluminum Corp.* and *Birmingham Fabricating Company*, the individuals found to be supervisors were vested with almost the sole control of their work areas and used independent judgment in determining the work to be performed, in making work assignments and in directing the workforce. The record discloses that the group leaders here are given work orders by management, which are contained on a "batch board." Although the group leaders may inform employees what machines to use, there is no evidence that such assignments or directions require the use of independent judgment necessary to confer supervisory status. See, *Children's Farm House*, supra; *Great American Products*, supra.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the group leaders are not supervisors within the meaning of Section 2(11) of the Act. *Capri Sun, Inc.*, supra; *Children's Farm Home*, supra. Accordingly, I shall include them in the unit.

STIPULATED SUPERVISORS:

The parties stipulated, and the record shows, that the Employer's vice-president of manufacturing, Terrill John Howell; the human resources director, Kevin Wiseman; the packaging director, Greg Yurchak; the manufacturing manager, James Hamilton; packaging supervisors, David Done and Darlene Comberger; the manufacturing supervisor, Robert Tracy; the purchasing/accounting director, David Boyle; the warehouse manager, Herb Wilson; the plant service supervisor, James Boyd; the plant service coordinator, Steve Ludwig; and the quality assurance supervisors, Bill Webb and Angela Raby, have the authority to hire, discharge or discipline employees or direct their work in a manner requiring the exercise of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

177-8560-1000

177-8560-1500

177-8560-4000